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EXTENDING THE REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT TO RECOMMENDATIONS FOR THE UNITED STATES VOTE IN INTERNATIONAL FINANCIAL INSTITUTIONS

AUGUST 25, 1988.—Ordered to be printed

Filed under the authority of the order of the Senate of August 11 (legislative day, August 10), 1988

Mr. BURDICK, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 2753]

The Committee on Environment and Public Works reports an original bill (S. 2753), to extend the requirements of the National Environmental Policy Act to recommendations for the United States vote in international financial institutions and recommends that the bill do pass.

BACKGROUND AND DESCRIPTION OF PROVISIONS

Actions of international financial institutions (IFI's) can and often do have significant detrimental effects on the environment. When voting on IFI actions, United States representatives should do so, to the maximum extent possible, with knowledge of domestic, foreign, and global environmental effects.

In order to encourage the availability and consideration of environmental effects of decisions by an IFI, the bill adds a new paragraph (D) to section 102(2) of the National Environmental Policy Act (NEPA). The new provision requires the appropriate officials of the Treasury Department to acquire and make available, 120 days prior to a vote on an action proposed by an IFI, an environmental impact assessment equivalent to the documents required under section 102(2)(C) of NEPA. The assessment is subject to NEPA's consultation and comment requirements, which might well be implemented, in part, through the already-existing interagency Working Group on Multilateral Assistance.

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It is not anticipated that the Treasury Department will, itself, assemble and analyze data for every assessment. It is one of the main functions of IFI management to supply member countries with the information necessary to make lending decisions. Thus, it is expected that Treasury will inform the managements of the IFI's of requirements in the bill and in regulations issued in accordance with the bill. United States officials should work with each institution's management and other member-countries to see that, to the maximum extent possible, the IFI's prepare, or have borrowing countries prepare, environmental assessments for actions where assessments are relevant.

The Treasury Department should begin immediately to develop regulations, consistent with the Council on Environmental Quality's NEPA regulations, to implement the requirements of the bill. Recognizing that all the procedures and requirements under NEPA, as elaborated to CEQ's regulations, may not be appropriate in this case, the bill gives CEQ explicit authority to amend its regulations to take into account the nature of the United States role as only one member of the multi-member IFI's. Treasury and CEQ should work together to produce regulations that prescribe both the process to be followed in acquiring and making assessments available and the nature of assessments that will be required, depending upon the type of action to be voted on. The regulations should tailor, to the maximum extent possible, the specific content required for assessments to the assessment process within each IFI.

In preparing regulations, CEQ and Treasury should look for guidance to the Goals and Principles of Environmental Impact Assessment adopted by the Governing Council of the United Nations Environment Program in June 1987. This document was developed by representatives of a variety of nations and is designed to accommodate a wide range of conditions in countries around the world.

In the event that information that complies with the regulations cannot be obtained from the IFI, the Treasury Department must include in the statement required by the bill an explanation of what steps were taken to get the information and the reasons that prevented it from being provided. This provision is designed to highlight the impediments to consideration of environmental factors in IFI lending decisions. If, for example, a loan with potential impact on groundwater is proposed, but an IFI cannot complete an assessment because of a lack of hydrological expertise, this shortfall would be made known.

Whether or not an assessment is available from the IFI, the Treasury Department must, where relevant and not duplicative, include in its statement information available to it through other agencies of the United States, such as the Agency for International Development.

As noted above, a statement must be available 120 days prior to a vote on a proposed action. This requirement will necessitate initiation of an environmental impact assessment early in the loan preparation process. If, by that time, an IFI has not provided such a document or the information needed for such a document, the Treasury Department must issue its statement containing the information that is available and the reason the IFI failed to supply information requested of it. If, subsequent to the 120-day deadline,

the IFI produces an assessment or relevant information, Treasury must see that this additional material is circulated and reviewed, to the maximum extent feasible, in compliance with its regulations. It is not anticipated that information about a loan, other than what is relevant to an environmental assessment, would have to be completed on the schedule established in the bill.

Consistent with the provisions of NEPA in other contexts, the contents of a statement prepared pursuant to the provisions of the bill will not, alone, determine how or whether the United States votes on an action proposed by an IFI. It should, however, be the policy of the United States to oppose proposals which there is good reason to believe would have significant adverse environmental effects, whether or not an adequate environmental impact assessment is available.

The effective date of the requirement in the bill is January 1, 1991. Beginning on that date, any recommendation for a vote by the United States on a proposed action that is determined under applicable NEPA regulations to require a statement must include a statement of the nature already discussed. The two-year interim period is provided to permit new procedures to be worked out within the IFI's and to provide time for consultation and cooperation between the United States, IFI management, and other member-countries. A two-year period also roughly corresponds to the time from a project's conception to its presentation to an IFI board for approval. The two years before the bill's effective date therefore, can be used to obtain information needed for projects that will come up for approval beginning January 1, 1991.

To enable an early review of implementation of the requirements in this bill, the Department of Treasury should provide a report to Congress no later than November 1, 1991. Such report should include a discussion of the revisions Treasury has made to its regulations to conform to the specified requirements; steps that have been taken to encourage IFI's to provide the information for environmental assessments; and a list of loans that have been voted on by the United States subsequent to the effective date of the new requirements showing whether or not an environmental assessment was available 120 days prior to the vote.

The bill is designed to build upon the groundwork laid in legislation proposed by the Appropriations Committees and other authorizing committees and enacted in Continuing Appropriations Acts over the last three years. The provisions in those laws have initiated a variety of important changes in the way the IFI's address environmental issues and have established the United States as a major impetus for these changes. This bill is intended to continue in that tradition.

HEARINGS

The Subcommittee on Hazardous Wastes and Toxic Substances of the Committee on Environment and Public Works held a hearing in Washington, D.C., on June 16, 1988, on the application of NEPA to U.S. participation in actions of international financial institutions.

Testimony was received from 11 witnesses including representatives of Federal agencies, public interest groups and other organizations.

Rollcall Votes

Section 7(b) of rule XXVI of the standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

The bill was ordered reported on July 14, 1988, by unanimous voice vote.

Regulatory Impact

Section 11(b) of rule XXVI of the Standing Rules of the Senate require the Committee to evaluate the regulatory impact of the reported bill.

It is not anticipated that this bill will impose any significant new regulatory burden.

Cost of Legislation

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That statement follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 1, 1988.

Hon. Quentin N. Burdick,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed a bill to extend the National Environmental Policy Act requirements to recommendations for the U.S. vote in international financial institutions, as ordered reported by the Senate Committee on Environment and Public Works on July 14, 1988. Beginning in January 1991, the bill mandates the preparation of environmental impact assessments for projects which seek funding from international financial institutions. These institutions include the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Inter-American Investment Corporation, the African Development Bank, and the African Development Fund.

Under the provisions of the bill, the Treasury Department would notify each institution of the new information needed by the United States, and would establish procedures for gaining such information. Each institution would be responsible for preparing the assessment. The Treasury Department would then evaluate and process the information contained in the assessment. Treasury estimates that an additional thirty full-time personnel would be

needed to perform these tasks. This is estimated to cost the Treasury Department approximately $1.5 million annually. The bill, however, does not contain any authorizations to offset these additional costs.

Sincerely,

JAMES L. BLUM,
Acting Director.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE NATIONAL ENVIRONMENTAL POLICY ACT

(Amended by P.L. 94-52, July 3, 1975; P.L. 94-83, August 9, 1975)

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PURPOSE

SEC. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I—DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

SEC. 101. (a) * * *

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SEC. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(A) * * *

* * * * * * *

(D) effective January 1, 1991, include in every recommendation for a vote of the United States on a proposed action significantly affecting the quality of the human environment by an institution listed in section 22 of the Export-Import Bank Act Amendments of 1986, a detailed statement by the responsible official equivalent to that required under subparagraph (C). Prior consultation and comment, as well as availability of the statement, shall also be as required under subparagraph (C), except that the statement must be available no less than 120 days before the date of the vote in question, and shall accompany the

recommendation through subsequent agency review processes. The Council on Environmental Quality may by rulemaking alter or amend its requirements under subparagraph (C) if it finds such requirements inapplicable to agencies under this subparagraph. The content of any detailed statement required by this subparagraph should be obtained from the institution proposing the action. If the requisite documents cannot be obtained in this manner, the responsible official shall comply with this subparagraph to the extent possible, and shall list in a detailed statement the steps taken to obtain the information, and the reasons for their failure.

[(D)] *(E)* Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the state agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

[(E)] *(F)* study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

[(F)] *(G)* recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

[(G)] *(H)* make available to States, counties, municipalities, institutions, and individuals, advice and information useful in

restoring, maintaining, and enhancing the quality of the environment;

[(H)] *(I)* initiate and utilize ecological information in the planning and development of resource-oriented projects; and

[(I)] *(J)* assist the Council on Environmental Quality established by title II of this Act.

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